

Y 02 SEP 17 AM 8:43
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

Docket No. TSCA-07-2002-0217

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondents are Ingersoll Acadian Partners and Richard Hickman (Respondents), 532 29th Street, Suite A, Des Moines, Iowa 50312.

Complainant's Allegations

Complainant has reason to believe that Respondents have violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Count I

1. Ingersoll Acadian Partners (Ingersoll Acadian) is a partnership in the State of Iowa.
2. Richard Hickman (Mr. Hickman) is an individual person.
3. For all periods of time relevant to the violation alleged herein, Ingersoll Acadian owned a residential property located at 532 29th Street, Des Moines, Iowa (the "Property").
4. For all periods of time relevant to the violation alleged herein, Mr. Hickman managed residential rental properties, including, among others, the Property located at 532 29th Street.
5. The Property was constructed prior to 1978.
6. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
7. On or about February 5, 1997, Respondents entered into a rental agreement with Elizabeth C. Binder and Joseph J. Wernau for the lease of Apartment D of the Property for residential use. On or about October 6, 1998, Respondents entered into another rental agreement (the "Contract") with Elizabeth C. Binder and Joseph J. Wernau for the lease of Apartment 2 of the Property for residential use.

8. As a result of the Contracts described in Paragraph 7 above, Ingersoll Acadian (the owner) became a "lessor", Mr. Hickman became an "agent", and Elizabeth C. Binder and Joseph J. Wernau became "lessees", as those terms are defined by 40 C.F.R. § 745.103.

9. Elizabeth C. Binder and Joseph J. Wernau subsequently moved into each apartment.

10. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

11. Pursuant to 40 C.F.R. § 745.115(a)(2), each agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

12. Respondents did not provide an EPA-approved lead hazard information pamphlet to Elizabeth C. Binder and Joseph J. Wernau prior to being obligated under the rental Contracts described in Paragraph 7 above.

13. Respondents' failure to provide an EPA-approved lead hazard information pamphlet to Elizabeth C. Binder and Joseph J. Wernau prior to being obligated under the rental Contracts described in Paragraph 7 above are violations of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2), and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondents admit that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admit nor deny Complainant's factual allegations above.

2. Respondents waive their rights to contest Complainant's allegations above, and their rights to appeal the Final Order accompanying this Consent Agreement.

3. Respondents and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Although not required by TSCA, or any other federal, state, or local law, in settlement of this matter, Respondents agree to conduct a lead abatement project on a residential property. The unit is a two bedroom apartment located in the 29th and Ingersoll Apartments, 532 29th Street, Des Moines, Iowa. The goal of the project is to reduce the possibility of future occupants being exposed to lead-based paint. As part of the work performed on the property, Respondents shall, at a minimum: remove and replace eighteen (18) window casings; remove, strip, refinish, and reinstall eighteen (18) windows; and remove and replace one door. Respondents agree to obtain prior written approval from EPA if Respondents decide to modify the project in such a manner that the above description of work would not be satisfied. Respondents agree that the abatement project shall only be performed by professionals certified by the State of Iowa to perform lead-based paint activities, as that term is defined in 40 C.F.R. § 745.223. Respondents agree to follow all applicable state and federal laws when performing this abatement project. Respondents agree that the abatement project shall be completed within one hundred eighty (180) days of the effective date of this Consent Agreement and Final Order. Within fourteen (14) days of completion of the abatement project, Respondents agree to provide EPA with a notarized statement indicating that the abatement project has been completed, along with an accounting of expenses incurred on the project. Respondents agree to include in the accounting statement a statement certifying that the expenses incurred and listed in the accounting

statement are accurate and represent only those expenses for the abatement project. Respondents agree not to claim this abatement project as a business expense on their federal, state, or local income tax returns and agree not to depreciate the costs on their tax returns.

6. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a mitigated civil penalty in the amount of One Thousand Seven Hundred Dollars (\$1,700) to be paid within thirty (30) days of the effective date of the Final Order. Furthermore, Respondent consents to the stipulated penalty provision contained in Paragraph 2 of the Final Order.

7. Respondents understand that their failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 6 above, or any stipulated penalties assessed pursuant to Paragraph 2 of the Final Order, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (five percent (5%) per annum for the period January 1, 2002 through December 31, 2002) on the unpaid balance until such civil penalty and/or stipulated penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a five percent (5%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondents shall undertake and complete the abatement project as set forth in Paragraph 5 of the Consent Agreement.

2. In the event that Respondents fail to undertake or complete the abatement project as set forth in Paragraph 5 of the Consent Agreement, Respondents shall pay a stipulated penalty in the amount of Five Thousand One Hundred Dollars (\$5,100). Such stipulated penalty shall become immediately due and payable within thirty (30) days of the scheduled completion date of the abatement project, which is set forth in Paragraph 5 of the Consent Agreement.

3. Respondents shall pay a mitigated civil penalty of One Thousand Seven Hundred Dollars (\$1,700) to be paid within thirty (30) days of the effective date of the Final Order. Such payment shall identify the Respondents by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

4. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and


Mike Gieryic
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

5. Respondents and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT
INGERSOLL ACADIAN PARTNERS:

Date 8-29-02

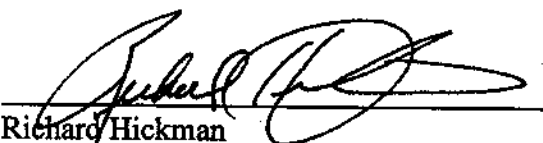
By


Print Name Title

RESPONDENT
RICHARD HICKMAN:

Date 8-29-02


By


Richard Hickman

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

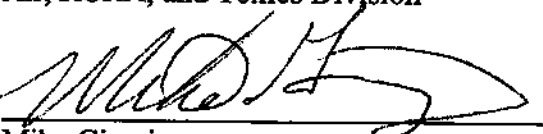
Date 9/12/02

By

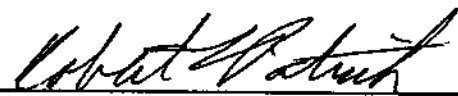

William A. Spratlin
Director
Air, RCRA, and Toxics Division

Date 9/13/02

By


Mike Gieryic
Assistant Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.


Robert L. Patrick
Regional Judicial Officer

Date September 16, 2002

IN THE MATTER OF Ingersoll Acadian Partners; and Richard Hickman, Respondents
Docket No. TSCA-07-2002-0217

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Michael Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Ingersoll Acadian Partners;
and Richard Hickman
532 29th Street, Suite A
Des Moines, Iowa 50312

Dated: 9/17/02


Kathy Robinson
Regional Hearing Clerk